

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 115 - SB 47

April 1, 2009

SUMMARY OF BILL: Requires contested case hearings pursuant to the Uniform Administrative Procedures Act (UAPA) to be conducted in the county of residence of the respondent party. Authorizes a party to obtain a *de novo* review in chancery court of an administrative agency decision.

ESTIMATED FISCAL IMPACT:

**Increase State Revenue – Exceeds \$89,000/Division of
Regulatory Boards
Exceeds \$24,600/Division of
Health-Related Boards**

**Increase State Expenditures - \$218,400/One-Time
Exceeds \$4,383,300/Recurring**

Increase Federal Expenditures – Exceeds \$3,526,000

Assumptions:

- All state agencies that conduct UAPA contested case hearings will be impacted by the enactment of this bill. Holding all contested case hearings in the county of residence of the respondent is estimated to increase the cost to hear such cases since staff, legal counsel, investigators, witnesses, and board members would be required to travel to the county of residence. There could also be increased costs for rental of facilities (when existing facilities are not available) to use for hearings that would now be held in every county.
- In FY07-08 there were approximately 3,351 contested cases handled by the Secretary of State's office for the following departments: TennCare - Medicaid (1,783), Safety – property forfeitures (885), Health (203), Environment and Conservation (100), Special Education (93), Commerce and Insurance (79), Human Resources – Civil Service Commission (133), and miscellaneous cases (75).
- In FY07-08, in addition to those handled by the Administrative Procedures Division in the Secretary of State's office, there were approximately 25,428 cases. The Department of Children's Services had

217 cases, Health (137), Labor and Workforce Development (74), and Human Services (25,000). According to the Administrative Office of the Courts (AOC), for FY05-06, there were 350 administrative hearing appeals, for FY06-07, there were 331, and for FY07-08, there were 333.

- *De novo* review will make it easier for appellants to have agency decisions overturned in chancery court. Although not all cases will be appealed, it is assumed that a significantly higher percentage of cases will be appealed than under current law. According to the AOC, allowing judicial review in a litigant's home county will not affect the volume of caseload, only the distribution. Any impact this legislation has on the caseloads of state trial and appellate courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.
- Under current law, administrative hearing reviews are conducted by record review. Authorizing a party to request a *de novo* hearing will involve a new evidentiary hearing in chancery court. According to the Attorney General and Reporter, these *de novo* appeals will require significantly more attorney time than is expended under current law. The Attorney General will require 13 additional attorneys, one investigator, and three support staff to meet the increased workload. Recurring state expenditures of \$1,880,500 include salaries and benefits for 13 attorneys (\$1,588,800), salary and benefits for one investigator (\$95,800) and salaries and benefits for three support staff (\$195,900). One-time expenditures of \$85,000 for the 17 additional positions for furniture, computers, telephones, and other related items.
- The Department of Human Services (DHS) estimates 1,500 TennCare and Medicaid cases would proceed to chancery court for a *de novo* hearing. Any individual who loses the appeal who has continued to receive TennCare benefits would be required to repay those benefits. DHS estimates 50 percent (750) would continue to receive benefits during the review process by order of the court. The annual cost for TennCare benefits is approximately \$3,300. DHS estimates an increase in federal expenditures of \$2,475,000 (\$3,300 x 750 reviews). According to DHS, the Department would require 10 additional attorneys, 10 program coordinators, and three legal assistants to handle the increased caseload. Recurring state expenditures of \$1,455,600 include salaries and benefits for 10 attorneys (\$740,000), salaries and benefits for 10 program coordinators (\$480,000) and salaries and benefits for three legal assistants (\$127,500), travel (\$50,000), and annual software maintenance and operating costs (\$58,100). DHS would incur expenditures of \$264,000 for computer changes to the Appeals Resolution Tracking System (ARTS). The State will receive a 50 percent federal match of \$859,800 for the administrative expenses
- State departments and agencies that conduct contested administrative hearings will incur additional costs in providing additional information

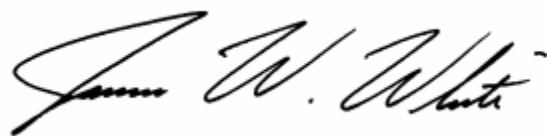
and assistance to the Attorney General in preparation for the *de novo* hearings. Such costs will include court reporters, transcripts, travel and per diem, expert testimony, investigations, witnesses and other related expenses. Some departments indicated that additional staff would be required due to the large number of cases that would now be required to be heard across the state.

- According to the Department of Children's Services (DCS), there would be a total increase to the department of \$590,800 resulting in an increase in state expenditures of \$399,600 and an increase in federal expenditures of \$191,200. This estimate is based on nine additional positions needed to handle the increased workload. Two additional case management positions at \$93,600 for salaries (\$68,800) plus benefits (\$24,800). Two investigator positions at \$81,600 for salaries (\$60,000) plus benefits (\$21,600). Two team leader positions at \$106,000 for salaries (\$78,000) plus benefits (\$28,000), and three attorney positions at \$210,600 for salaries (\$154,800) plus benefits (\$55,800). One-time costs are estimated at \$99,000 for the nine additional positions (\$11,000 x 9 positions).
- According to the Department of Commerce and Insurance, the increase in state expenditures is estimated to be \$154,800 and \$88,500 in state revenue. This estimate is based on a cost of \$19,500 to the Securities Divisions for travel expenses (\$3,750) for five staff persons to attend five hearings per year plus rental space costs (\$5,000), ALJ (\$4,000), court reporter (\$1,750), and transcripts (\$5,000); a cost to the Insurance Division of \$46,800 for travel expenses (\$9,000) for five staff persons to attend 12 meetings per year plus rental space costs (\$12,000), ALJ (\$9,600), court reporter (\$4,200), and transcripts (\$12,000); and a cost to the Division of Regulatory Boards of \$58,500 for travel expenses (\$11,250) for five staff persons to attend 15 hearings per year plus rental space costs (\$15,000), ALJ (\$12,000), court reporter (\$5,250), and transcripts (\$15,000); and an increase in fees from the Attorney General's office for representation (\$30,000). Under Tenn. Code Ann. § 4-29-121, the Division of Regulatory Boards must generate sufficient revenue to cover expenditures.
- According to the Department of Labor and Workforce Development, the increase in state expenditures is estimated to be \$93,130 reflecting salary (\$57,500) plus benefits (\$26,220) and travel, supplies, and other related items (\$9,410) for one additional staff person. One-time expenditures of \$5,600 for office landscaping, computer, and software.
- According to the Department of Health, the recurring increase in expenditures to the department is estimated to be \$24,600. It is further estimated that the Division of Health-Related Boards will have an increase in revenue of at least \$24,600 to cover additional costs and to remain self-supporting.

- According to the Department of Environment and Conservation, the recurring increase in expenditures is estimated to be \$36,000 for travel expenses, transportation and other related items for four boards to hear six appeals per year.
- According to the Department of Safety, the Legal Division would require six additional positions to handle the increased workload at a recurring cost of \$333,056 which reflects salaries for three attorneys (\$138,000), three administrative secretaries (\$67,068) plus benefits (\$72,388), and operational costs of (\$55,600). One-time expenditures of \$28,800 for the six positions for computers, telephones, office landscaping, and other related items.
- The Tennessee Bureau of Investigation (TBI) and Tourist Development estimate a recurring increase in state expenditures of \$1,000 each to cover minimal travel expenditures. The Tennessee Board of Probation and Paroles estimates a recurring increase in state expenditures of \$4,000 to cover travel expenditures.
- The fiscal impact is estimated to be a recurring increase in state expenditures of \$4,383,286; a one-time increase in state expenditures of \$218,400; an increase in state revenue of \$113,600; and an increase in federal expenditures of \$3,526,000.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

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